

# United States District Court

FOR THE  
NORTHERN DISTRICT OF CALIFORNIA  
CRIMINAL DIVISION  
VENUE: SAN FRANCISCO

FILED  
09 MAY 26 PM 12:25  
CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

v.

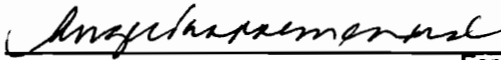
FLEET MANAGEMENT LIMITED

DEFENDANT.

## INDICTMENT

18 U.S.C. § 1001( false Statements)( five Counts)  
18 U.S.C. § 1519( Obstruction) ( Three Counts)  
33 U.S.C. §§ 1319(c)(1)(A), 1321(b)(3) (Clean Water  
Act) (one count) ( a Class A misdemeanor)  
16 U.S.C. §§ 703,707( Migratory Bird Treaty Act) (one  
count) ( a Class B Misdemeanor)

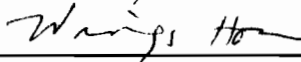
A true bill.



Foreman

Filed in open court this 26th day of

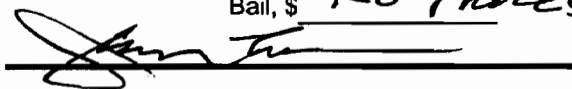
MAY 2009



Clerk

Bail, \$

NO PROCESS



**DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT**

BY: ☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT  
☒ SUPERSEDING

**OFFENSE CHARGED**

18 U.S.C. § 1001 (false Statements) (five Counts)  
 18 U.S.C. § 1519 (Obstruction) (Three Counts)  
 33 U.S.C. §§ 1319(c)(1)(A), 1321(b)(3) (Clean Water Act) (one count) (a Class A misdemeanor)  
 16 U.S.C. §§ 703, 707 (Migratory Bird Treaty Act) (one count) (a Class B Misdemeanor)

☐ Petty  
☐ Minor  
☒ Misdemeanor  
☒ Felony

**PENALTY:**

See Attachment A

Name of District Court, and/or Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

**DEFENDANT - U.S.**

Fleet Management Limited

DISTRICT COURT NUMBER

CR 08-0160 SI

**PROCEEDING**

Name of Complainant Agency, or Person (&amp; Title, if any)

U.S. Coast Guard

☐ person is awaiting trial in another Federal or State Court, give name of court

☐ this person/proceeding is transferred from another district per (circle one) FRCrp 20, 21, or 40. Show District

☐ this is a reprosecution of charges previously dismissed which were dismissed on motion of:

☐ U.S. ATTORNEY ☐ DEFENSE

SHOW DOCKET NO.

☐ this prosecution relates to a pending case involving this same defendant

MAGISTRATE CASE NO.

☐ prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

**IS NOT IN CUSTODY**

Has not been arrested, pending outcome this proceeding.

1) ☐ If not detained give date any prior summons was served on above charges

2) ☐ Is a Fugitive

3) ☐ Is on Bail or Release from (show District)

**IS IN CUSTODY**

4) ☐ On this charge

5) ☐ On another conviction

☐ Federal ☐ State

6) ☐ Awaiting trial on other charges

If answer to (6) is "Yes", show name of institution

Has detainer been filed? ☐ Yes ☐ No

If "Yes" give date filed

DATE OF ARREST

Month/Day/Year

Or... if Arresting Agency &amp; Warrant were not

DATE TRANSFERRED TO U.S. CUSTODY

Month/Day/Year

Name and Office of Person

Furnishing Information on this form Joseph P. Russoniello

☒ U.S. Attorney ☐ Other U.S. Agency

Name of Assistant U.S.

Attorney (if assigned)

Jonathan Schmidt/Stacey Geis

☐ This report amends AO 257 previously submitted

**ADDITIONAL INFORMATION OR COMMENTS****PROCESS:**

☐ SUMMONS ☐ NO PROCESS\* ☐ WARRANT

Bail Amount: \_\_\_\_\_

If Summons, complete following:

☐ Arraignment ☐ Initial Appearance

Defendant Address:

\* Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Date/Time: \_\_\_\_\_ Before Judge: \_\_\_\_\_

Comments:

ATTACHMENT A

Penalty:

Count One: the greater of \$ 200,000 fine or twice the gross gain or loss resulting from the offense, and a \$ 25 special assessment

Count Two : the greater of \$15, 000 fine or twice gross gain or loss resulting from the offense, and \$ 10 special assessment

Counts Three- Eight: the greater of \$ 500,000 fine or twice the gross gain or loss resulting from the offense \$ 100 Special assessment

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CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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Attorneys for Plaintiff  
United States of America

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
FLEET MANAGEMENT LIMITED  
Defendant.

No. CR 08 -00160-SI

VIOLATIONS:

Title 18 U.S.C. § 1001 (false statements)  
(five counts);  
Title 18 U.S.C. § 1519 (obstruction)  
(three counts);  
Title 33 U.S.C. §§ 1319(c)(1)(A),  
1321(b)(3) (Clean Water Act) (one  
count)(a Class A misdemeanor);  
Title 16 U.S.C. §§ 703, 707  
(Migratory Bird Treaty Act) (one  
count)(a Class B Misdemeanor)

1                                    **THIRD SUPERSEDING INDICTMENT**

2            The Grand Jury charges:

3                                    **INTRODUCTION**

4            At all times relevant to this Indictment:

5            1. Defendant FLEET MANAGEMENT LIMITED ("FLEET") was a ship  
6            management company headquartered in Hong Kong. FLEET managed and operated  
7            approximately 190 vessels, including the *M/V Cosco Busan*. As the operator of *M/V*  
8            *Cosco Busan*, defendant FLEET was responsible for selecting, training and supervising  
9            the vessel's crew. Defendant FLEET acted by and through its agents and employees,  
10           acting within the scope of their agency and employment and for the benefit of defendant  
11           FLEET, including senior bridge officers and shore-based supervisory personnel.

12           2. The *M/V Cosco Busan* was a 901 foot, 65,131 gross ton freight vessel registered in  
13           Hong Kong and bearing IMO number 9231743.

14           3. On or about October 24, 2007, defendant FLEET assumed responsibility for the  
15           first time for operating the *M/V Cosco Busan* and on that same day, installed a new crew  
16           on *M/V Cosco Busan*, most whom had not previously worked for FLEET and none of its  
17           officers had previously worked on this vessel. On October 25, 2007, the *M/V Cosco*  
18           *Busan* set sail for the United States from Pusan, Korea

19           4. The *M/V Cosco Busan* had a Bridge Procedures Manual that required detailed  
20           passage planning before every voyage. The Manual stated that "the detailed plan should  
21           embrace the whole passage, from berth-to-berth, and also include waters where a Pilot  
22           will be on board" (Section 1.3.5.1) A berth-to-berth plan encompasses the entire voyage  
23           of the vessel; a pilot-to-pilot plan covers the open ocean transit where pilots are not  
24           required.

25           5. On November 7, 2007, the *M/V Cosco Busan*, with John Joseph Cota as its Bar  
26           Pilot, and with FLEET as its operator and employer of its master and crew, departed the  
27           Port of Oakland in heavy fog and struck the Delta tower of the San Francisco Bay Bridge,  
28           which resulted in the discharge of approximately 50,000 gallons of heavy fuel oil and

caused environmental damage, including the loss of migratory birds.

## LEGAL FRAMEWORK

### The Clean Water Act and the Oil Pollution Act

6. In the Federal Water Pollution Control Act (the “Clean Water Act”), as amended by the Oil Pollution Act, 33 U.S.C. § 1321(b)(1), Congress has declared that it is the policy of the United States that there should be no discharges of oil or hazardous substances into or upon the navigable waters of the United States or the adjoining shorelines.

7. The Clean Water Act makes it a crime for a person to negligently discharge oil into or upon the navigable waters or contiguous zone of the United States in such quantities as may be harmful. 33 U.S.C. §§ 1319(c)(1) and 1321(b)(3).

8. The Clean Water Act defines a “discharge” as any spilling, leaking, pumping, pouring, emitting, emptying or dumping. 33 U.S.C. § 1321(a)(2). The Clean Water Act defines “oil” as oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge and oil residue. 33 U.S.C. § 1321(a)(1).

9. Federal regulations promulgated under the Clean Water Act define a “harmful” quantity of oil as including any discharges of oil that cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or adjoining shorelines. 40 C.F.R. § 110.3.

10. The Clean Water Act defines the “navigable waters” of the United States as the waters of the United States and the territorial seas, which are defined to be water extending three (3) miles seaward of the ordinary low tide mark. 33 U.S.C. §§ 1362(7) and 1362(8). Navigable waters also includes internal waters, which are “the waters shoreward of the territorial sea baseline.” 33 C.F.R. §§ 2.24(a); 2.36. San Francisco Bay is a navigable waterway of the United States.

### The Migratory Bird Treaty Act

11. The Migratory Bird Treaty Act (“MBTA”) makes it unlawful for any person, at

1 any time, by any means or in any manner, to take or kill any migratory bird without a  
2 permit or as otherwise provided by regulation. 16 U.S.C. §§ 703, 707(a).

3 12. The term "take" in the MBTA includes killing or wounding. 50 C.F.R. § 10.12.

4 13. The Brown Pelican (*Pelecanus occidentalis*), Marbled Murrelet, (*Brachyramphus*  
5 *marmoratus*), and Western Grebe, (*Aechmophorus occidentalis*), among others, are listed  
6 as migratory birds pursuant to the MBTA. 50 C.F.R. § 10.13.

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COUNT ONE

33 U.S.C. §§ 1319(c)(1), 1321(b)(3)

(Clean Water Act – Negligent Discharge of a Pollutant)

14. Paragraphs 1-13 are realleged and incorporated by reference as though fully set forth herein.

15. Between on or about October 24, 2007, and on or about November 7, 2007, in San Francisco Bay, within the Northern District of California, the defendant,

FLEET MANAGEMENT LIMITED,

did negligently discharge and cause the discharge of oil in such quantities as may be harmful from a vessel, the *M/V Cosco Busan*, into and upon the navigable waters of the United States. Specifically, on or about November 7, 2007, defendant Fleet Management Limited (Fleet), acting by and through its agents and employees, negligently caused more than 50,000 gallons of heavy fuel oil to be discharged from the vessel into San Francisco Bay by acting in a negligent manner, that included, one or more of the following:

- A. Fleet failed to adequately train the Master and crew of the *M/V Cosco Busan*, including with regard to voyage passage planning, the role of the Master and crew to a pilot, the ship's navigational procedures and the ship's navigational equipment, including the ship's electronic chart system;
- B. Fleet and Cota failed to navigate an allision free course;
- C. Fleet and Cota failed to prepare and review an adequate passage plan before departure;
- D. Fleet and Cota failed to conduct an adequate review with the Pilot, Master and crew of the *M/V Cosco Busan* before departure of the official navigational charts, the proposed course, the location of the San Francisco Bay aids to navigation, and the operation of the vessel's navigational equipment;
- E. Fleet and Cota departed in heavy fog;
- F. Fleet and Cota proceeded at an unsafe speed during the voyage despite limited visibility;
- G. Fleet and Cota failed to use the vessel's radar while making the final approach to the Bay Bridge;
- H. Fleet and Cota failed to adequately read and operate the vessel's electronic chart while making the final approach to the Bay Bridge;
- I. Fleet and Cota failed to adequately use the vessel's paper charts by failing to



1 record and review positional fixes during the voyage;

2 J. Fleet and Cota failed to verify the vessel's position in relation to other established  
3 and recognized aids to navigation throughout the voyage;

4 K. Fleet failed to ensure that adequate lookouts were posted during the voyage; and

5 L. Fleet failed to notify the Pilot when the vessel went off course while making the  
6 final approach to the Delta-Echo span of the Bay Bridge.

7 All in violation of Title 33, United States Code, Sections 1319(c)(1)(A) and  
8 1321(b)(3), a Class A misdemeanor, and which resulted in at least approximately \$20  
9 million in pecuniary losses to persons, Title 18, United States Code, Section 3571(d).

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COUNT TWO

16 U.S.C. §§ 703 and 707(a) (Migratory Bird Treaty Act)

16. Paragraphs 1-13 are realleged and incorporated by reference as though fully set forth herein.

17. On or about November 7, 2007, in San Francisco Bay, within the Northern District of California, the defendant,

FLEET MANAGEMENT LIMITED,

acting by and through its agents and employees, without being permitted to do so by regulation as required by law, did take migratory birds, including at least one Brown Pelican, (*Pelecanus occidentalis*), Marbled Murrelet, (*Brachyramphus marmoratus*) and Western Grebe, (*Aechmophorus occidentalis*).

All in violation of Title 16, United States Code, Sections 703 and 707(a), and Title 50, Code of Federal Regulations, Sections 21.11, 20.71 and 20.72, a Class B misdemeanor.

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COUNT THREE

18 U.S.C. §1001(a)(2) (False Statements)

18. Paragraphs 1-13 are realleged and incorporated by reference as though fully set forth herein.

19. Between on or about November 7, 2007, and on or about December 7, 2007 in the Northern District of California, the defendant,

FLEET MANAGEMENT LIMITED,

knowingly and willfully made materially false, fictitious, and fraudulent statements and representations in a matter within the jurisdiction of the executive branch of the Government of the United States, specifically, defendant Fleet Management Limited, acting through its agents and employees, created a berth- to-berth passage plan purporting to be the passage plan prepared and available on the bridge for the *M/V Cosco Busan's* October 25, 2007, voyage from Pusan to Long Beach, when in fact, Fleet Management Limited knew that this passage plan was prepared after November 7, 2007, and that the actual passage plan prepared for the *M/V Cosco Busan's* October 25, 2007, voyage from Pusan to Long Beach was a pilot-to-pilot passage plan that was not actually prepared until on or about November 2, 2007.

All in violation of Title 18, United States Code, Section 1001(a)(2).

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COUNT FOUR

18 U.S.C. §1001(a)(2) (False Statements)

20. Paragraphs 1-13 are realleged and incorporated by reference as though fully set forth herein.

21. Between on or about November 7, 2007, and on or about December 7, 2007 in the Northern District of California, the defendant,

FLEET MANAGEMENT LIMITED,

knowingly and willfully made materially false, fictitious, and fraudulent statements and representations in a matter within the jurisdiction of the executive branch of the Government of the United States, specifically, defendant Fleet Management Limited, acting through its agents and employees, created a berth-to-berth passage plan purporting to be the passage plan prepared and available on the bridge for the *M/V Cosco Busan's* November 6, 2007, voyage from Long Beach to Oakland when in fact, Fleet Management Limited knew that this passage plan was prepared after November 7, 2007 and that the actual passage plan prepared and available on the bridge for the *M/V Cosco Busan's* November 6, 2007, voyage from Long Beach to Oakland was a pilot-to-pilot passage plan.

All in violation of Title 18, United States Code, Section 1001(a)(2).

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COUNT FIVE

18 U.S.C. §1001(a)(2) (False Statements)

22. Paragraphs 1-13 are realleged and incorporated by reference as though fully set forth herein.

23. Between on or about November 7, 2007, and on or about December 7, 2007 in the Northern District of California, the defendant,

FLEET MANAGEMENT LIMITED,

knowingly and willfully made materially false, fictitious, and fraudulent statements and representations in a matter within the jurisdiction of the executive branch of the Government of the United States, specifically, defendant Fleet Management Limited, acting through its agents and employees, created a berth-to-berth passage plan on a Fleet format purporting to be the passage plan prepared and available on the bridge for the *M/V Cosco Busan*'s November 7, 2007, voyage from Oakland to Pusan, when in fact, Fleet Management Limited knew that this passage plan was prepared after November 7, 2007, and that the actual passage plan prepared and available on the bridge for the *M/V Cosco Busan*'s November 7, 2007, voyage from Oakland to Pusan was a pilot-to-pilot passage plan on a Waypoint for Windows format.

All in violation of Title 18, United States Code, Section 1001(a)(2).

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COUNT SIX

18 U.S.C. §1519 (Obstruction)

24. Paragraphs 1-13 are realleged and incorporated by reference as though fully set forth herein

25. Between on or about November 7, 2007, and on or about December 7, 2007, in the Northern District of California, the defendant,

FLEET MANAGEMENT LIMITED,

knowingly altered, destroyed, mutilated, concealed, covered up, falsified, and made false entries in a record with the intent to impede, obstruct, and influence the investigation and proper administration of a matter within the jurisdiction of the U.S. Coast Guard and Department of Homeland Security and in relation to and in contemplation of a matter, specifically, after the *M/V Cosco Busan*'s allision with the San Francisco Bay bridge and the resulting discharge of approximately 50,000 gallons of oil, defendant Fleet Management Limited, acting through its agents and employees:

- A. made a false and fictitious berth-to-berth passage plan purporting to be the passage plan prepared and available on the bridge for the *M/V Cosco Busan*'s October 25, 2007, voyage from Pusan, Korea, to Long Beach, California;
- B. made a false passage planning appraisal checklist for the October 25, 2007, voyage, purporting to be the actual passage planning appraisal checklist prepared in advance of the voyage; and
- C. concealed and covered up the actual passage plan for this voyage that contained only pilot-to-pilot information.

All in violation of Title 18, United States Code, Section 1519.

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COUNT SEVEN

## 18 U.S.C. §1519 (Obstruction)

26. Paragraphs 1-13 are realleged and incorporated by reference as though fully set forth herein.

27. Between on or about November 7, 2007, and on or about December 7, 2007, in the Northern District of California, the defendant,

FLEET MANAGEMENT LIMITED,

knowingly altered, destroyed, mutilated, concealed, covered up, falsified, and made false entries in a record with the intent to impede, obstruct, or influence the investigation and proper administration of a matter within the jurisdiction of the U.S. Coast Guard and Department of Homeland Security and in relation to and in contemplation of a matter, specifically, after the *M/V Cosco Busan's* allision with the San Francisco Bay bridge and the resulting discharge of approximately 50,000 gallons of oil, defendant Fleet Management Limited, acting through its agents and employees:

- A. made a false and fictitious berth-to-berth passage plan purporting to be the passage plan prepared and available on the bridge for the *M/V Cosco Busan's* November 6, 2007, voyage from Long Beach, California, to Oakland, California;
- B. made a false passage planning appraisal checklist for the November 6, 2007, voyage purporting to be the passage planning appraisal checklist prepared in advance of the voyage; and
- C. concealed and covered up the actual passage plan for this voyage that contained only pilot-to-pilot information.

All in violation of Title 18, United States Code, Section 1519.

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COUNT EIGHT

18 U.S.C. §1519 (Obstruction)

28. Paragraphs 1-13 are realleged and incorporated by reference as though fully set forth herein

29. Between on or about November 7, 2007, and on or about December 7, 2007, in the Northern District of California the defendant,

FLEET MANAGEMENT LIMITED,

knowingly altered, destroyed, mutilated, concealed, covered up, falsified, and made false entries in a record with the intent to impede, obstruct, and influence the investigation and proper administration of a matter within the jurisdiction of the U.S. Coast Guard and Department of Homeland Security and in relation to and in contemplation of a matter, specifically, after the *M/V Cosco Busan*'s allision with the San Francisco Bay bridge and the resulting discharge of approximately 50,000 gallons of oil, defendant Fleet Management Limited, acting through its agents and employees:

- A. made a false and fictitious berth-to-berth passage plan purporting to be the passage plan prepared and available on the bridge for the *M/V Cosco Busan*'s November 7, 2007, voyage from Oakland, California, to Pusan, Korea;
- B. made a false passage planning appraisal checklist for the November 7, 2007, voyage purporting to be the passage planning appraisal checklist that was prepared in advance of the voyage; and
- C. concealed and covered up the actual passage plan for the November 7, 2007, voyage that contained only pilot-to-pilot information.

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1 All in violation of Title 18, United States Code, Section 1519.

2  
3 DATED:

A TRUE BILL.

4 5/26/09

5 Angela de la Cruz  
FOREPERSON

6  
7 JOSEPH P. RUSSONIELLO  
8 United States Attorney

9 Brian J. Stretch  
10 BRIAN J. STRETCH  
11 Chief, Criminal Division

12 (Approved as to form: AA)  
13 AUSA Schmidt and Geis

14 JOHN C. CRUDEN  
15 Acting Assistant Attorney General  
16 Environment & Natural Resources Division  
U.S. Department of Justice

17 Richard A. Udeh  
18 RICHARD A. UDELL  
19 Senior Trial Attorney  
20 Environmental Crimes Section  
21 U.S. Department of Justice  
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